

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.351 OF 1996

1. Dattaram Maruti Sakpal,)

Age 33 years.)

2. Rajaram Maruti Sakpal,)

Age 28 years,)

3. Prakash Maruti Sakpal,)

Age 27 years.)

All residents of Vilakan)

Khurd, Kulkatwadi,)

Taluka Mahad, Dist. Raigad.).. Appellants

Vs.

1. State of Maharashtra,)

(At the instance of Sou.)

2. Sunita Yeshwant Sakpal,)

R/o.Wakan Khurd, Tal. Mahad,)

Dist. Raigad.).. Respondents

Shri A.P.Mundargi for the appellants.

Shri A.M.Shringarpure, APP for the State.

--

CORAM : V.G.PALSHIKAR &

R.C.CHAVAN, JJ

DATE : 23RD JUNE, 2005.

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. This is an appeal challenging conviction and resultant sentences inflicted on appellants for offences punishable under Sections 302, 506 and 323 read with Section 34 of the Indian Penal Code.

2. Facts which led to the prosecution of the three appellants are as under:-

. Deceased Yeshwant was Uncle of the appellants. About 8 days before the 12th June, 1992, a bullock cart carrying coal belonging to Maruti, father of the appellants, had been seized by the forest department. Suspecting that Yeshwant had informed the forest officials, Maruti started abusing Yeshwant and his family.

3. On 12th June, 1992, at about 4.00 p.m., the

victim's daughters, Surekha and Sujata, had gone to the river to fetch water. Sujata came weeping and informed her mother that her sister Surekha was beaten by Anita and another female member of Maruti's family. Victim Yeshwant proceeded towards the river on hearing this. Accused No.1 Dattaram Maruti Sakpal armed with spear, accused No.2 Rajaram and accused No.3 Prakash, armed with axes with curved blades, chased the victim. Out of fear, victim Yeshwant entered the house of one Bhagi Katkari. Sunita sought to arm her husband Yeshwant with a spear, but the accused No.1 snatched the same and gave it to his mother Laxmi. Accused No.1 broke open the door of Bhagi Katkari's house. Accused Nos.2 and 3 barged into the house from a window and three of them beat up the victim Yeshwant. They did not heed the victim's entreaties to let him go. Accused No.2 Rajaram and accused No.3 Prakash were pelting stones at the victim. When Sunita, victim's wife, went to her husband's rescue, she too sustained injuries. Yeshwant succumbed to his injuries on the spot itself.

4. Sunita, wife of the victim, gave a written report to the Police Station, Mahad, where an offence punishable under Sections 302, 323, 504 read with 34 of the Penal Code came to be registered. In course of investigation, the police performed inquest upon the dead body and sent the same for post-mortem examination. They recorded statements of witnesses, arrested the accused persons, interrogated the accused

and recovered a spear at the instance of the accused No.1 Dattaram. Property seized was sent to the Forensic Science Laboratory for analysis. On completion of the investigation, a charge sheet was sent to the Judicial Magistrate, First Class at Mahad. The learned Magistrate committed the case to the Court of Sessions at Alibag, District - Raigad, on finding that an offence triable exclusively by the Court of Sessions was made out.

5. The learned Sessions Judge, Raigad-Alibag, charged the accused for the offence punishable under Sections 302, 336, 452, 323, 504 and 506 read with 34 of IPC. The accused persons pleaded not guilty. They were put on trial. The actual trial was assigned to the Additional Sessions Judge, Raigad-Alibag. In course of the trial, the prosecution examined in all 14 witnesses. After examining the accused, and considering the arguments advanced, the learned Additional Sessions Judge convicted the accused-appellants of the offences punishable under Sections 302, 506 and 323 read with 34 of IPC and sentenced them to suffer rigorous imprisonment for life, rigorous imprisonment for one year and rigorous imprisonment for one month, and fine of Rs.2,000/-, Rs.1,000/- and Rs.100/-, respectively. In default of payment of fine each of the accused was sentenced to undergo further rigorous imprisonment for one year, one month and seven days, respectively, on the three heads of the charges. The learned Sessions Judge

proceeded to acquit the accused-appellants for the offence punishable under Sections 336, 452 and 504 of the Penal Code.

6. Aggrieved thereby the appellants have preferred the present appeal. We have heard both the learned counsel for appellants and the learned APP at adequate length.

7. The learned counsel for appellants contended that the victim had left his house to question the family members of the accused in respect of an altercation amongst the females in the families and was the aggressor who gave provocation. This contention, raised to reduce the gravity of charge, would imply that accused did participate in the incident. It would therefore not be open for the appellants to urge that they had no role to play in the incident which led to death of Yeshwant. The learned Additional Sessions Judge has thus rightly accepted the versions of the eye witnesses, P.W.No.2 Sunita Yeshwant Sakpal and P.W.4 Chandri Rajaram More, about complicity of the accused in the incident. P.W.5 Anjana Narayan Sakpal and P.W.6 Surekha Yeshwant Sakpal too state about the presence of the accused when Yeshwant was lying in an injured state. Both of them state that the accused No.2 Rajaram Sakpal prevented them from getting water for the victim. Anjana -P.W.5 even claims to have been beaten by the accused No.2 Rajaram.

8. Apart from this, a spear used in commission of offence was recovered by the police under the panchanamas at Exhibits 42 and 43 drawn up in presence of P.W.12 Kishore Ganpat More and P.W.13 Suresh Bhiva Pawar, by P.W.14-API Sonu Sampat Bhamare. The spear was stated to stated to have been concealed by accused Dattaram near boundary of field of one Shankar Pawar. He also uncovered at the same spot a hoe used by another accused Prakash Sakpal. These two articles were sent to the Forensic Science Laboratory by Investigating Officer P.W.14 API Sonu Bhamare vide requisitions Exhibits 13, 14 and 15. It is worthy of note that report of the laboratory at Exhibit -17 shows that the spear had stains of human blood, though the blood group could not be ascertained. Thus, participation by the three accused persons in assault which led to death of Yeshwant has been duly established.

9. The learned counsel for the appellants contended that the learned Sessions Judge erred in convicting the appellants for the charge of murder. He submitted that an assault with an intention to cause death had not at all been established by the prosecution. According to him, the prosecution story itself made it abundantly clear that in fact, it was the victim who was in an aggressive stance on learning that one of his daughters had been beaten by the family members of the appellants. The learned counsel

pointed out that the victim was also sought to be armed by his own wife, who attempted to pass on a spear to him. In the circumstances, the learned counsel submitted that there was absolutely no question of the appellants indulging into a pre-meditated intentional assault to take the life of the victim.

10. The learned APP countered by contending that the intention would have to be gathered from the nature of the assault launched. He pointed out that there were as many as six incise wounds, four of which show that they were aimed at the head and face and the remaining two were inflicted on the hip and thigh. Only after necessary intention or knowledge is gathered from the nature of assault would the question of provocation if any offered by deceased become relevant.

11. The evidence of Doctor Shivraj Malikarjun Dange, who was examined as Witness No.1 for the prosecution, shows that none of the six injuries inflicted on the victim would have been individually sufficient to cause death in ordinary course of nature. It seems that six injuries taken together led to death on account of blood loss. None of the injuries were inflicted on a vital part of the body.

12. Though the weapon of assault is said to have been a spear, P.W.1 Dr.Dange categorically stated in

his examination-in-chief itself that minimum force ought to have been used for causing the injuries observed by him in Column No.17 of the post-mortem notes, at Exhibit 21. The use of minimum force while inflicting such injuries cannot be lightly brushed aside. It would indicate that though the person using weapon had opportunity of inflicting a fatal wound, he still exhibited a restraint. Therefore, it would be difficult to attribute intention or knowledge to the assailants that such an assault would lead to death of the victim. Rather, this would clearly rule out an intention to cause a bodily injury of the type described in various clauses of Sections 299 or 300 of Indian Penal Code. Hence, the learned APP's contention that assault would qualify for punishment under Part II of Section 304 of Indian Penal Code, if not under Section 302 cannot be accepted. In view of the finding as to cause of death, it would be difficult to attribute knowledge to the assailants that injuries will lead to death, in the peculiar circumstances where the medical officer has categorically stated that minimum force was used by the person wielding the spear.

13. Though eye witnesses P.W.2 Sunita and P.W.4

Chandri state that the victim was also beaten by pelting stones at him there appear to be no injuries caused by such stone pelting.

14. Absence of requisite intention or knowledge to

cause death takes the case out of not only Section 302 of IPC but both the parts of Section 304 of IPC. Yet, it may be seen that accused persons had launched an attack with dangerous weapons which must be said to have resulted in grievous hurts to the victim, since he died as a result of those injuries. Therefore, conviction recorded by the learned Sessions Judge for an offence punishable under Section 302 read with 34 of IPC will have to be altered to one under Section 326 read with 34 of IPC.

15. Learned counsel for the appellants submitted that the injuries could be attributed only to one of the appellants. Therefore, appellant Nos.2 and 3 would, at worst, be held guilty of stone pelting and, therefore, could not be convicted under Section 326 of IPC. This contention cannot be accepted because all the three accused persons had joined in the attack on the victim, though the injuries observed on the person of victim were caused by a spear held by accused No.1. The presence and active participation of accused Nos.2 and 3 facilitated in inflicting the injuries. In the absence of accused Nos.2 and 3 in the small hut admeasuring 12 x 10 ft., it would have been possible for the victim to save himself. Therefore, since the criminal act involving all the three accused persons points to common intention of all the three accused persons, accused Nos.2 and 3 too, must be held guilty of offence punishable under Section 326 read with Section 34 of IPC.

16. The learned Sessions Judge has convicted accused persons of offences punishable under Sections 506 and 323 read with 34 of IPC. It seems that accused persons were charged of offence punishable under Section 323 of IPC for causing simple injuries to Sunita Sakpal (P.W.2) and Anjana Narayan Sakpal (P.W.5). We have gone through the record. It is strange that the prosecution has not produced any injury certificates in respect of Sunita Sakpal and Anjana Narayan Sakpal nor has any medical officer been examined to prove such injuries. Therefore, conviction under Section 323 of IPC cannot be upheld.

17. As for conviction for the offence punishable under Section 506 read with 34 of IPC, suffice it to observe that allegations in this behalf do not relate to any independent incident but seem to concern war-cries that may have been let out when the parties were engaged in the assault. No significance needs to be attached to such intimidatory words.

18. In view of this, we allow the appeal partly. Conviction of appellants, for the offences punishable under Sections 302, 323 and 506 read with Section 34 of Indian Penal Code and resultant sentences, is set aside. Instead, the three appellants are convicted for the offence punishable under Section 326 read with 34 of Indian Penal Code and sentenced to suffer rigorous imprisonment for five years each. Needless

to say that period of detention in custody prior to their conviction by the Trial Court and the sentence undergone after conviction would be set off against this sentence. Fine if paid would have to be refunded.

19. The appellants are on bail. They shall surrender to their bail before the learned Sessions Judge, Alibag, who shall commit them to the prison to serve their remaining sentences.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)